

6048

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Washington, D.C.

CROFT METALS, INC.

Employer

and

**INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS AND HELPERS,
AFL-CIO**

Petitioner

CASE NO. 15-RC-~~8389~~

8393

TO THE HONORABLE MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD

REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

NOW COMES EMPLOYER, Croft Metals, Inc. through undersigned counsel and respectfully requests that the Board review the Supplemental Decision and Direction to Count Impounded Ballots issued by the Acting Regional Director for the Fifteenth Region of the National Labor Relations Board on August 7, 2002. This Request for Review is made pursuant to Section 102.67 of the Board's Rules and Regulations, as amended. The Employer will show, upon the granting of the Request for Review by the Board, that:

1. The Regional Director's Decision and Direction of Election raises substantial issues of law and policy because of its departure from officially reported Board precedent;

2. The Regional Director's Decision on substantial factual issues is clearly erroneous on the record and such error prejudicially affects the rights of the Employer and others affected thereby;

3. There are important and compelling reasons for reconsideration of important Board rules or policies.

Statement of the Case

The Employer herein is a Mississippi corporation which engages in the manufacture of aluminum and vinyl windows and doors at its Magnolia, Mississippi facility. The employer has enjoyed a peaceful collective bargaining relationship with the Southern Council of Industrial Workers, and its affiliated Local Union No. 2280 United Brotherhood of Carpenters and Joiners of America, for many years. Local 2280 was the certified collective bargaining representative as established in Case Number 15-RC-4641. Included in the collectively bargained unit are:

All production and maintenance employees employed at the Company's Magnolia Manufacturing facility, including plant clerical employees, interplant drivers, and leadpersons, excluding over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, watchmen, guards, and supervisors as defined by the National Labor Relations Board in Case Number 15-RC-4641.

The last collectively bargained agreement expired November 30, 2001.

On March 4, 2002, a decertification petition was filed by Anna Clayton, an individual who self-identified herself as "union in-plant vice president." On April 5, 2002, a certification petition was filed by the International Brotherhood of

Boilermakers, Iron Ship Builders, Blacksmiths Forgers and Helpers, AFL-CIO, (hereinafter referred to as Petitioner) seeking to be certified as the bargaining representative of "all production and maintenance employees, excluding "[a]ll guards, office clerical employees, professional employees and supervisor [sic] as defined in the Act."

Despite Employer's objection, on April 10, 2002, the Region unilaterally noticed a representation hearing for Monday, April 15, 2002. The incumbent union was not a recipient of the Notice. There is no evidence in the Record that the certification in favor of the Carpenter's union has been revoked.

Pursuant to this notice, a hearing was conducted in McComb, Mississippi, before Hearing Officer Tara Yoest. The Decision and Direction of Election was issued by Acting Regional Director for the Fifteenth Region, James G. Paulsen, on May 1, 2002. The Employer timely requested review of the Decision and Direction of Election. The Request for Review was granted, ***Croft Metals, Inc.*, 337 NLRB No. 106 (June 21, 2002)**. The Board remanded the matter to the Region for reopening the hearing to receive additional evidence.

On June 25, 2002, the Acting Regional Director ordered a reopened hearing for July 8, 2002. Pursuant to this notice, a hearing was conducted in McComb, Mississippi, before Hearing Officer Tara Yoest. A Second Decision and Direction of Election was issued by Acting Regional Director for the Fifteenth Region, Rodney D. Johnson, on July 29, 2002. On July 31, 2002, Acting Regional Director Johnson issued an Order Revoking Second Decision and Direction of Election "in its entirety." On August 7, 2002, a Supplemental Decision was issued in which the Acting Regional Director found that the following employees of the Employer constituted a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

Included: All production and maintenance employees employed at the Company's Magnolia manufacturing facility, including material inventory clerks, plant clerical employees, inter-plant driver, and lead persons.

Excluded: All over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, plant nurse, corporate traffic records lead person, corporate traffic records clerk, personnel technician, CAD technician, accounting and payroll clerk, production control clerk, watchmen, guards, and supervisors as defined in the Act.

This unit is the same unit found appropriate in the First Decision and Direction of Election. The Acting Regional Director ordered the ballots cast on May 29, 2002, which had been impounded pending disposition of the Request for Review, counted, subject to Employer's right to file a Request for Review of the Supplemental Decision.

The Issues

The issues presented by this Request for Review include:

1. The Acting Regional Director erred in failing to exclude leadpersons, including the "A" and "B" leadpersons, the leadpersons known as load supervisors, and the maintenance leadpersons, because these persons possess and exercise at least one statutory indicia of supervisory authority.
2. The Acting Regional Director erred in including the material inventory clerks.
3. The Acting Regional Director erred by not directing a second election since the passage of time resulted in a substantial turnover in the unit found appropriate.

1. **The leadpersons and lead supervisors possess and exercise statutory indicia of supervisory authority and accordingly should be excluded from any unit found appropriate.**

Supervisors are excluded from the Act's definition of "employee" because they are agents of the employer. **§ 2 (11)** Accordingly, supervisors do not enjoy the protection of the Act and should be excluded from any unit found appropriate for collective bargaining. *See, e.g., Long Beach Youth Center*, 230 NLRB 648, 95 LRRM 1451 (1977), *enforced*, 591 F.2d 1276, 101 LRRM 2501 (9th Cir. 1979). Leadpersons have, in appropriate factual circumstances been found to be supervisors. *N.L.R.B. v. McCullough Environmental Services, Inc.*, 5 F.3d 923 (5th Cir. 1993); *Clark v. Wilkins Industries, Inc.*, 132 LRRM 2758 (D. C. Cir. 1989). The existence of any one of the statutorily enumerated supervisory indicia suffices to confer supervisory status. *Entergy Gulf States, Inc. v. N.L.R.B.*, 253 F.3d 203, 209 (5th Cir. 2001) ("Because we focus on whether OCs responsibly direct others with independent judgment, it will be unnecessary to consider the extent to which OCs reward or discipline others"). *See, e.g., NLRB v. Island Film Processing Co.*, 784 F.2d 1446, 1451, 121 Lrrm 3290 (9th Cir. 1986).

The Fifth Circuit has noted is appropriate to consider "secondary indicia" in determining whether one is a supervisor. *Monotech of Miss. v. NLRB*, 876 F.2d 514, 517 (5th Cir. 1989) (applying secondary indicia to find that lead hands at a production and maintenance facility were supervisors). *See II C. MORRIS, THE DEVELOPING LABOR LAW* at 1454 (2d ed. 1983). One secondary factor recognized by the Board is whether the person is perceived as a supervisor. *Id.*; *see also Helena Laboratories Corp.*, 225 NLRB 257, 265, 93 LRRM 1418 (1976) (lead lady accorded supervisor status where company held her out to employees as such), *modified*, 557 F.2d 1183, 96 LRRM 2101 (5th Cir. 1977); *Aurora & East Denver Trash Disposal*,

218 NLRB 1, 10, 89 LRRM 1416 (1975) (foreman who claimed he was mere conduit for employer's orders to employees was supervisor where he led other employees to believe he was one); **Gerbes Super Market, Inc., 213 NLRB 803, 806, 87 LRRM 1762 (1974)** (department manager was supervisor where he was regarded by fellow employees as their "boss" and was considered person in authority); **Broyhill Co., 210 NLRB 288, 294, 86 LRRM 1158 (1974)** (foreman a supervisor where company placed him in a position such that employees reasonably believed that he spoke on management's behalf), *enfd.*, **514 F.2d 655, 89 LRRM 2203 (8th Cir. 1975)**.

There are 20-25 acknowledged supervisors who report directly to higher management. (R. 13). Approximately 15 acknowledged supervisors have responsibility for production and manufacturing. (R. 71).¹ There are approximately 350 other employees employed in the manufacturing process as is established by the Petition. Many of the acknowledged supervisors have responsibility for multiple departments, and multiple production lines within those multiple departments spread throughout the facility. (R. 17, 32-3). The acknowledged supervisors are not physically present, or in a position to observe, the employees on the various lines as they perform their duties. (R. 32-3).

A. The "A" and "B" leadpersons

Working in the plant there are "A" and "B" leadpersons who are physically present in the work area to which they are assigned. (R. 17-8). The leadpersons are not assigned to perform a specific task on a production line. (R. 18-9). During a normal production day leadpersons would perform some manual labor, but they remain responsible for the direction of the line. (R. 37, 72-3).

¹ In his supplemental Decision, at page 7, the Acting Regional Director misreads the evidence to conclude there are 20-25 acknowledged supervisors over the production and maintenance employees. There are only about 15 over the production and maintenance employees. The rest supervise the office or over the road drivers.

Employer's Exhibit 5 is a job bid posting describing the responsibilities for a leadperson "A" position which was bid on December 5, 2001. The successful bidder, and current occupant of the position, Ronald Tate, was one of Petitioner's witnesses at the reopened hearing. The job bid posting establishes the rate of pay for the position is \$9.35 per hour.

Exhibit 5 establishes Management assigns leadperson "A's" the responsibility to "[I]nsure the safe, efficient and cost effective operation of the area assigned." Additionally, the leadperson is responsible for using his/her independent judgment to insure; (1) that employees are assigned to jobs which best suit their abilities, and productivity requirements; (2) that all employees, especially new employees, are trained in the proper methods to perform the job, (3) that all employees understand the quality and cost implications of using improper methods, (4) that he motivates and encourages employees, (5) that he monitors quality of work and uses his independent judgment to use employees according to their ability to ensure optimum productivity and orderly production, (6) compliance with safety rules, the use of proper safety equipment, (7) employees are at their work stations timely, and remain there until the end of the work shift. Employer Exhibit 5. Mr. Tate, after reviewing the Exhibit, testified that he was performing the duties as described in the Exhibit. (R. 242-3). At a minimum this uncontroverted evidence concerning Mr. Tate's duties meets Employer's burden of establishing his statutory supervisor status.

These same, or similar supervisory duties are exhibited by the job descriptions posted for bidding on other leadperson "A" jobs. **See, e.g.**, Employer Exhibit 21, (vinyl door), and Leadperson "B" jobs also. **See, e.g.**, Employer Exhibits 19 (prime window) and 20 (general plant). The successful bidders on each job are identified on the second page of each exhibit. They are Oliver Anderson, Otis Thompson, Georgia Butler and Ronald Tate. At a minimum this uncontroverted evidence concerning these

4 employees duties meets Employer's burden of establishing their statutory supervisor status.

These 4 individuals are currently employed as leadpersons and their job duties are consistent with those of the other leadpersons in the plant. (R. 298-302). The Employer expects its leadpersons to perform the tasks described in the job bid posting. (R. 269-70). Because these jobs are posted, management has publicly held these individuals out as wielding supervisory authority to non-supervisory employees.

Employer's Plant Personnel Director, Tim Leonard testified leadpersons had effectively recommended employees for hire, and provided several examples. (R. 272-75). Mr. Leonard also related specific incidents where leadpersons had effectively recommended discipline and discharge. (R. 276-8, 280). Leonard also testified about leadpersons participating in the process of evaluating employees. (R. 279). Employer's Exhibit 17, and Leonard's testimony about the Exhibit, establishes leadpersons are directly involved in filling out and signing performance evaluations. (R. 294-7, 309, 312). Leonard also testified that probationary employees have been terminated before they became permanent based upon the recommendation of a leadperson. (R. 310).

The "A" and "B" leadpersons report directly to acknowledged supervisors. The supervisors train the leadpersons. (R. 28) The supervisors rely upon the lead persons to direct responsibly the work of the other employees on the lines, to advise employees on their line how to solve problems. (R. 28, 280) The leadpersons are viewed by the employees on their line as the boss. (R. 48-9,136, 183). When the supervisor is in another area of the plant, the leadperson is the sole authority on the line. (R. 93-4, 280, 326-7) The leadpersons are held responsible for the line production by the supervisors. (R. 46-7, 49, 187-8, 280-1, Employer's Exhibit 2). Leadpersons are responsible for production paperwork. (R. 200, 232). Leadpersons have been disciplined for the failure of their line to meet production goals. (R. 46,

190-91, 235-6, 280-293, Employer Exhibits 2, 4, 6-16). It is precisely because a leadperson is "answerable for the discharge of a duty or obligation" or is accountable for the work product of the employees he directs, that he is found to responsibly direct others. **NLRB v. KDFW-TV, Inc., 790 F.2d 1273, 1278 (5th Cir. 1986)**

Leadpersons are entrusted with the job of keeping the productive flow of the line moving, responding to employee requests for assistance, ensuring that materials are available so that production is maintained, to clear up problems or impediments to production on the line, to issue verbal warnings (R. 244) to report disciplinary problems to supervision or human resources. (R. 18, 28, 33-4, 72, 94-5, 192-5, 226, 245, 280, Employer Exhibit 3). In one particular instance Petitioner's witness testified he had independently ascertained an employee could not perform a job function. After so doing he sent the employee to human resources, a decision the leadperson made independently, (R. 213, 278), and the employee was terminated, without further investigation based upon the decision of the leadperson. (R. 192-5).

The leadpersons are responsible for calling out maintenance to repair machinery on the line. (R. 34). If a person gets ill on the line, the leadperson has the authority to allow the ill employee off the line to go to first aid, and in a serious circumstance, to assist the employee to first aid, without seeking permission to do so. (R. 37, 330-31) Leadpersons have the authority to permit employees to leave work early. (R. 50). Leadpersons also can request additional personnel for their departments, but they can not select the personnel to be "borrowed." However, the leadperson is the one to assign the specific work duties to the borrowed employee. (R. 214, 325-6).

Leadpersons are responsible for ensuring employee time records are accurate. (R. 218, 245). They verify the hours worked by reviewing the time records of employees working on their lines. (R.186, 219, 302-6, Employer Exhibits 3, 22).

Many leadpersons actually verify time records and sign them themselves. (R. 218-9, Employer Exhibits 3, 22).

Leadpersons are responsible for instructing the employees on the line, correcting job performance and solving problems. (R. 38). Employees bring their problems and complaints to Leadperson "A's." (R. 248-9). One indicator of supervisory authority is whether other employees routinely seek out the individuals alleged to be supervisors for assistance in performing their duties. **See e. g., N.L.R.B. v. McCullough Environmental Services, Inc., 5 F.3d 923, n. 30.**

Leadpersons report misconduct to supervisors. (R. 47, 245). Lead persons effectively recommend discipline because the information relayed by them to acknowledged supervision is not independently investigated. (R. 47-8, 192-5), Lead persons have effectively recommended discipline because they have written warnings which acknowledged supervision has signed, without independently investigating the factual basis for the warning. (R. 72). In the absence of supervision, a common occurrence on the line, leadpersons are authorized to bring, and have brought employees directly to the personnel office. (R. 42-3, 48). In such circumstances the personnel office accepts the information presented by the leadperson without conducting an independent investigation. (R. 42) All of this is authorized and done without requesting permission from acknowledged supervision. (R. 34).

The "A" and "B" leadpersons are responsible for evaluating the performance of probationary employees, and ultimately effectively recommend whether probationary employees are retained. (R. 30-1). Leadpersons also effectively recommend employees for raise, promotion. (R. 39-40) and transfer. (R. 40-1)

The "A" and "B" leadpersons often fill in for acknowledged supervisors (R. 246), and are authorize to, and have issued written warnings when so doing. (R. 43-4). Additionally, leadpersons effectively recommend discipline because the supervisors

rely upon their factual assertions and recommendations. (R. 77).

Production control determines what product the lines will produce on a given day. Acknowledged supervision communicates the production control information to the leadpersons. The leadpersons, using their independent judgment concerning worker's capabilities, determine which employees will be assigned to which tasks on the line (R. 45, 184-5). When employees are "borrowed" from another department, to replace absent employees, the leadperson decides where the "borrowed employee will be assigned. (R. 230). This is done without the need of supervisory approval. (Id.). The borrowed employee looks to the leadperson to determine where he/she will be assigned to work. (R. 230-1).

At the reopened hearing, Petitioner's witness, Nolan Carmel acknowledged that his employees look to him as their "boss." (R. 182-3). Carmel acknowledged the employees are supposed to "follow [his] instructions." (R. 183). Carmel admitted he is responsible for determining which job on the line will be worked by which employee. (R. 184). This decision is based upon Carmel's independent judgment as to which employee is best capable of getting the work out. (R. 185).

Specialty leadpersons are paid over 46% more per hour than the highest paid production employees appropriately included in the unit. "A" leadpersons are paid over 26% more than the highest paid production employees appropriately included in the unit. See (R. 179). "B" leadpersons are paid over 10% more than the highest paid production employees appropriately included in the unit. (R. 38). Union witness Carmel, after trying to avoid acknowledgement of the large wage disparity between leadpersons and production workers, admitted the 46% pay differential for leadpersons was because they were responsible for "getting the stuff out" [productivity], and for letting his crew "know what to do." (R. 182-3).

Lead persons are either assigned, or have access to desks, just like

acknowledged supervisors, production employees do not. (R. 52, 199). Some desks are for the exclusive use of the leadpersons. (R. 233). Some leadpersons actually share offices with the acknowledged supervisors. (R. 252). For these reasons the leadpersons should be excluded as supervisors.

B. The specialty leadpersons in maintenance

In addition to being paid over 46% more per hour than the highest paid production employees appropriately included in the unit, the specialty leadpersons in maintenance are also crew foremen. (R. 22) They responsibly direct the various maintenance crews and report to the maintenance manager. (Id.) The day to day activities of the maintenance crews are directed by the specialty leadpersons in maintenance. (R. 23). Specialty leadpersons in maintenance receive only general instructions from the maintenance manager concerning the crew's assigned task, and thereafter use their independent judgement to determine how the crew will complete the task. (R. 22-3) The maintenance manager is not normally present at the worksite where the task is performed. (R. 22-4) There are approximately 20 maintenance employees who are engaged at any given time on multiple projects throughout the plant. (R. 26) There are less than five specialty leadpersons in maintenance. (R. 26).

The specialty leadpersons in maintenance have the authority to discipline employees and has actually done so. (R. 23). Employer has become increasingly reliant upon the specialty leadpersons in maintenance because the number of acknowledged supervisors in maintenance has been reduced to one individual. (R. 25-6). Other specialty leadpersons (Margie Mullins) have been excluded from the unit under the prior collective bargaining agreement, and by stipulation by the union (R. 19, 54)

C. The load supervisors

The employees referred to by bargaining unit members as the load supervisors

or truck supervisors are classified as leadperson "A" (R. 118, 138, 140, 249, 262), and are paid \$9.30 per hour. (R. 256). Load supervisors are responsible for the proper loading of the over-the-road trucks. (R. 120, 256). If that process is not completed timely, the load supervisor is disciplined. (R. 258-9). Load supervisors make the independent decision as to how properly to load the trucks to ensure accurate and efficient delivery of the product to Employer's customers. (R. 120-21). They also use their independent judgment to assign tasks to employees on their crews. (R. 263).

The testimony of Union presented witness Leo Holmes established that he, as a load supervisor, responsibly directs the work of his four person crew. (R. 138-142, 144). Mr. Holmes testified at the second hearing that he was not aware of any need to change anything in his prior testimony. Moreover, it is clear that the load supervisors are regarded as a supervisor by the employees on their crews. (R. 145-6). **Gerbes Super Market, Inc., 213 NLRB 803, 806, 87 LRRM 1762 (1974)**. If their truck is not loaded properly the load supervisor is held accountable for the crews failure, and is subject to discipline for that failure. (R. 253).

Mr. Holmes acknowledges that he is paid over 26% more than the men on his crew because he has more responsibility. (R. 150). In his Decisions, the Acting Regional Director incorrectly claims that Mr. Holmes did not acknowledge this wage differential, because he did not testify about his hourly wage, or that of his subordinates. However, Holmes testified he was a lead person "A" (R. 138) and that he received more money than his crew because "I got more responsibility." (R. 150) The uncontradicted earlier given testimony of Vic Donati established that leadperson "A's" are paid greater than 26% more an hour, than are non-leadpersons. (R. 38). At the reopened hearing, Mr. Martin, Petitioner's witness and a load supervisor, testified

he made \$ 9.30 per hour. (R. 256).

In his Decision and Direction of Election, the Acting Regional Director also incorrectly claims Mr. Holmes was the only witness to testify about the load supervisor's position. The term "load supervisor" is not an acknowledged job classification. Mr. Holmes is a leadperson "A" consequently Mr. Donati's and Mr. Leonard's testimony about leadpersons is, in fact, testimony about the load supervisors. **See also**, (R. 262) He also testified that he counsels with employees concerning work performance. (R. 151) In the substantial three month absence of Mr. Holmes immediate supervisor, he reported directly to Harvey Driver, (R. 147) who is the plant manager (R. 13).

2. The clerical positions in issue which were excluded under the former collective bargaining agreement, should be excluded from any unit found appropriate.

The undisputed evidence is that these clerical positions have little or no contact with non-leadperson production and maintenance employees. (R. 133-4) Petitioner has not met its burden of establishing why an historical unit collectively bargained over 32 years is no longer an appropriate unit for collective bargaining. The Board's longstanding policy holds that a change in parties to an obligation to bargain should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to standards of appropriateness. **See NLRB v. Burns Security Services, 406 U.S. 272, 279 (1972), Crown Zellerbach Corp., 346 NLRB 203, 203 (1979).**

A. The Material Inventory Clerks

There are two material inventory clerks who were not in the previously certified, and subsequently collectively bargained unit. **See Union Exhibit 1.** (R. 65-8)

One works in the production warehouse, and the other works in the maintenance stock room. (R. 58). Although they have contact with employees appropriately included in the unit, the contact is limited in nature, and they are located in areas not normally frequented by unit employees. (R. 60)

B. Greenlee

Greenlee works in a separate warehouse from the main plant in the production store room. (R. 61). Greenlee, unlike the employees appropriately included in the unit, uses a computer to perform certain tasks. (R. 92) This position was excluded under the prior collective bargaining agreement. (R. 62).

C. Sandifer, Strawbridge, Fleming

These employees work in the production control office. (R. 62). Unlike the employees appropriately included in the unit, these employees use a computer to perform certain tasks. (R. 92-3) All were excluded under the prior collective bargaining agreement. (R. 63). None of the production and maintenance employees have access to these computers. (R. 92)

3. The interplant drivers should be excluded from any unit found appropriate.

The interplant drivers are required to have a commercial driver's license. (R. 54), and reports directly to the plant manager. (R. 55). The interplant drivers are physically isolated from production and maintenance employees, and work under different supervision. (R. 84). The interplant drivers work outside where they deal with the 50 tractors and 100 + trailers which are driven by the company's over the road drivers which have been excluded from any unit found appropriate. (R. 55). The interplant drivers share no contact or community of interest with the other persons appropriately included in the unit. On occasion interplant drivers will short haul a delivery of goods to a nearby customer. (Id.). The majority of the interplant drivers'

duty will involve moving trucks and trailers. (R. 56). Although the interplant drivers receive an hourly wage like employees appropriately includable in the unit, they receive additional compensation when driving, making his compensation more like the over the road drivers. (R. 57). Unlike the production and maintenance employees the interplant driver has received hazardous material training. (R. 91)

4. The Testimony of Charles Coleman

The union produced, as a witness, Charles Coleman, a "B" leadperson (R. 117), and president of the Carpenter's union local which had the previous collective bargaining relationship. (R. 98-100, 119). Much of Mr. Coleman's testimony was consistent with that of Mr. Donati. Coleman admitted he was "in control." (R. 104). He admitted responsibility for quality, production and assignment of the employees to achieve the daily production. (R. 104-5), permitting employees to leave the line, (R. 107-8), training new employees (R. 111), recommending to supervision on hiring decisions (R. 113), inspects and directs employees to correct performance deficiencies (114), is incredibly effective in such instruction (99.5%) (R. 115), has a desk, and the key to the lock on the desk, (R. 115-6), ensuring production paperwork is in order (123, 232), grants permission to leave the line, (R. 124-5), is responsible for quality on the line (R. 115, 126, 137) is responsible for the correct labeling of product (R. 126-7),

To the extent that Mr. Coleman's testimony, and that of the employee working on his line, Nettie Johnson, conflict with that of Mr. Donati, Mr. Leonard and the other witnesses, it should be limited to its face, and his line. Their testimony related only to circumstances involving Mr. Coleman's line, not the plant in general. This evidence establishes little more than that Charles Coleman does not exercise the authority he is given, and in essence is not performing his job as required. His

testimony was limited to his individual circumstances. The union had ample opportunity , at both hearings to question Mr. Coleman or other witnesses concerning the exercise of supervisory authority of other leadpersons, but chose not to do so.

6. Union's Presentation of Additional Evidence

At the Hearing, the Employer objected to the presentation of additional evidence by the Petitioner. Employer maintains the Union failed to file a Request for Review concerning any inadequacy of opportunity to present evidence at the previous hearing. Furthermore the Petitioner participated in the prior hearing without raising any objection concerning the inadequacy of notice to it. Employer contends Petitioner's actions constitute a knowing waiver of any right to present additional evidence. This objection was over ruled by the Hearing Officer. (R. 178). To the extent the Acting Regional Director relied upon additional evidence presented by the Union at the reopened hearing.²

7. Status of the Carpenter's Union

There is no evidence in the record concerning the status of the Carpenters' union, which had a Board certification in its favor and a 32 year history of collective bargaining. Employer believes that a formal revocation of the prior certification, and/or evidence of a formal Disclaimer of Interest are necessary proof which must be in the record in this proceeding. Their absence renders the record incomplete.

Also of note is the question as to what capacity Mr. Coleman attended the hearing. He apparently continues to be President of a Carpenters Union local which

² Reliance upon the testimony of the union's additional witnesses, and upon the testimony of Ms. Johnson at the second hearing is established by the Supplemental Decision at, *e.g.*, pp. 8-9, 14, 18.

may or may not have an interest in this proceeding. (R. 119). The Acting Regional Director finds Mr. Coleman's presence at the Hearing, presence compelled by subpoena, to be a waiver of any participation by the Carpenter's Union. The simple fact is there is an existing Certification in Case Number 15-RC-4641, which has not been properly addressed in either Hearing. This issue was raised by Employer in its briefs, both before and after the second hearing, yet the Region failed to provide the evidence which the Acting Regional Director claims is in its possession. Supplemental Decision at p. 4. Employer has not been presented the March 29, 2002 disclaimer of interest by the Carpenter's Union referenced in the Supplemental Decision at p. 4. If it exists, it should be a part of the Record, but it is not. Thus, the Record is incomplete, and the Board should Order the Region to reopen the record for the purpose of establishing the Carpenter's union disclaimer.

Respectfully submitted this 20th day of August, 2002.



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Attorneys for Croft Metals, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Brief has been served upon Petitioner by facsimile transmission 1-615-791-3891, and upon the Acting Regional Director by United States Mail, postage pre-paid, this 20th day of August, 2002.



Norman A. Mott, III

~~The~~ following job is open in the SHIPPING Dept: 310

Job Title: LEAD PERSON "A" Job Class: 604 Pay: \$9.35

SUMMARY OF DUTIES:

The Leadperson "A" will 1) Work under the direction of the department supervisor to coordinate all activities for the area assigned. 2) Insure the safe, efficient and cost effective operation of the area assigned and insure the proper products to be shipped are loaded according to the shipping orders.

SPECIFIC RESPONSIBILITIES:

** Direct the activities of all employees in the assigned area of responsibility as follows:

- Insure that each employee is assigned to the task or job (within the guidelines of the job class and bid system) that best suits their abilities and allows for optimum output.
- Insure that each employee (especially new employees) is trained in the proper methods for the job assigned and understands the quality or cost implications of using improper methods.
- Encourage teamwork, motivate employees, and continually monitor activities, utilizing each employee's capabilities to insure smooth flow and optimum output.
- Insure that company rules, policies, and procedures are being followed-in particular; 1) Insure that personal protective equipment is available and is being properly used. 2) Insure that all employees are at their assigned work stations and begin work in a timely manner at the start of the shift or work period and 3) Insure that all employees continue working until the end of the shift or work period.
- Assist the department supervisor in identifying employees that are not performing as required and work with them to identify any problems and contributing factors, and to develop and implement strategy to correct the problem.
- Will function as dock coordinator.
- Will direct lead supervisor and other shipping employees as needed.

Insure that the shipping schedule is followed, that all products are loaded as scheduled and that all shipping orders are completed in a timely manner.

- Discuss any necessary deviations from the shipping schedule with the department supervisor.
- Insure that every product shipped meets all applicable quality standards.
- Continually review the shipping schedule and insure that availability of products to be shipped.
- Identify problems with products to be shipped and work with the department supervisor to make any necessary changes and correct the problems in an expeditious manner.

QUALIFICATIONS:

- Must have a thorough understanding of the shipping department and be able to take charge in the absence of the department supervisor.
- Must possess good leadership skills and be able to direct the activities of and motivate a group of 5-10 employees.
- Must thoroughly understand all task involved in the pulling of orders and loading trucks.
- Must be able to read and interpret shipping orders.
- Must be able to use tape measure.

AWARDED

1 Ronald Tate

DEPT 310 JC 405 7/2/87

2 Myres C Hollinshead #

DEPT 155 JC 204 7/18/01

3 Irwin P Furios Voors

DEPT 155 JC 204 8/15/01

4 _____

5 _____

6 _____

7 _____

ONE SLOT AVAILABLE

8-10-98 Time 2:00 p.m. Bid No. 98-237

Employee 18

adm. thul

The following job is open in the SAMPLE DEPT 314

Job Title LEADPERSON "B" Job Class 513 Pay \$7.45

SUMMARY OF DUTIES:

The Leadperson "B" will 1) Work under the direction of the department supervisor to coordinate all activities for the area assigned. 2) Insure the safe, efficient and cost effective operation of the area assigned and insure the production of finished goods or products that meet or exceed all applicable quality standards.

SPECIFIC RESPONSIBILITIES:

- ** Direct the activities of all employees in the assigned area of responsibility as follows:
 - * Insure that each employee is assigned to the task or job (within the guidelines of the job class and bid system) that best suits their abilities and allows for optimum output.
 - * Insure that each employee (especially new employees) is trained in the proper methods for the job assigned and understands the quality or cost implications of using improper methods.
 - * Encourage teamwork, motivate employees, and continually monitor activities, utilizing each employees capabilities to insure smooth flow and optimum output.
 - * Insure that company rules, policies, and procedures are being followed-in particular;
 - 1) Insure that personal protective equipment is available and is being properly used. 2) Insure that all employees are at their assigned work stations and begin work in a timely manner at the start of the shift or work period and 3) Insure that all employees continue working until the end of the shift or work period.
 - * Assist the department supervisor in identifying employees that are not performing to established standards or rates and work with them to identify any problems and contributing factors, and to develop and implement a strategy to correct the problem.
- ** Insure that the production schedule is followed, that all products are built as scheduled and that all production orders are completed in a timely manner.
 - * Discuss any necessary deviations from the production schedule with the department supervisor.
 - * Insure that every product assembled meets or exceeds all applicable quality standards.
 - * Continually review the production schedule and provide direction for the sample makers to insure the uninterrupted flow of materials (both purchased and fabricated) to the sample assembly area.
 - * Identify problems with materials (glass, vinyl, etc.) and work with the department supervisor to make any necessary changes and

QUALIFICATIONS:

- * Must possess good leadership skills and be able to direct the activities of and motivate a group of 10-20 employees.
- * Must possess a thorough understanding of all products (design and operation) and be familiar with field problems associated with these products.
- * Must thoroughly understand all assembly task for the sample department and the proper methods for each.
- * Must be able to read and interpret production orders, product specifications and blueprints.
- * Must be able to use measuring instruments such as a tape measure, dial calipers, etc.

AWARDED

1. Terry Lenoir
2. Vanda L. Lenoir
3. Billy Gray
4. H. W. Spoor
5. James M. Lenoir
6. _____
7. _____
8. _____
9. _____
10. _____

One slot available.

Employer 19
admitted

1-14-99 Time 2:00 p.m. Bid No. 99-038

The following job is open in the PRIME WINDOW DEPT 155

Job Title LEADPERSON "B" Job Class 513 Pay \$7.65

SUMMARY OF DUTIES:

The Leadperson "B" will 1) Work under the direction of the department supervisor and the Production Foreman to coordinate all activities for the assembly line or area assigned. 2) Insure the safe, efficient and cost effective operation of the area assigned and insure the production of finished goods or products that meet or exceed all applicable quality standards.

SPECIFIC RESPONSIBILITIES

Direct the activities of all employees in the assigned area of responsibility as follows:

Insure that each employee is assigned to the task or job (within the guidelines of the job class and bid system) that best suites their abilities and allows for optimum output.

Insure that each employee (especially new employees) is trained in the proper methods for the job assigned and understands the quality or cost implications of using improper methods.

Encourage teamwork, motivate employees, and continually monitor activities, utilizing each employees capabilities to insure smooth flow and optimum output.

Insure that company rules, policies, and procedures are being followed-in particular; 1) Insure that personal protective equipment is available and is being properly used. 2) Insure that all employees are at their assigned work stations an begin work in a timely manner at the start of the shift or work period and 3) Insure that all employees continue working until the end of the shift or work period.

Assist the department supervisor or the production foreman in identifying employees that are not performing to established standards or rates and work with them to identify any problems and contributing factors, and to develop and implement a strategy to correct the problem.

Insure that the production schedule is followed, that all products are built as scheduled and that all production orders are completed in a timely manner.

Discuss any necessary deviations from the production schedule with the department supervisor or production foreman.

Insure that every product assembled meets or exceeds all applicable quality standards.

Continually review the production schedule and provide direction for the material handlers to insure that uninterrupted flow of materials (both purchased and fabricated) to the assembly line

11-16-99 Time: 1:30 p.m. Job Bid : 99-285
2nd shift

Employee 20
admission

The following job is open in the GENERAL PLANT Dept: 305

Job Title: Lead Person "B" Job Class: 513 Pay: \$7.65

SUMMARY OF DUTIES:

The Leadperson "B" will 1) Work under the direction of the department supervisor and the Production Foreman to coordinate all activities for the area assigned. 2) Insure the safe, efficient operation of the area assigned and insure that all assigned areas are cleaned to specifications in an orderly manner.

SPECIFIC RESPONSIBILITIES:

Direct the activities of all employees in the assigned area of responsibility as follows:

Insure that each employee is assigned to the task or job (within the guidelines of the job class and bid system) that best suits their abilities and allows for optimum output.

Insure that each employee (especially new employees) is trained in the proper methods for the job assigned and understands the quality or cost implications of using improper methods.

Encourage teamwork, motivate employees, and continually monitor activities, utilizing each employees capabilities to insure smooth flow and optimum output.

Insure that company rules, policies, and procedures are being followed-in particular; 1) Insure that personal protective equipment is available and is being properly used. 2) Insure that all employees are at their assigned work stations and begin work in a timely manner at the start of the shift or work period and 3) Insure that all employees continue working until the end of the shift or work period.

Assist the department supervisor or the production foreman in identifying employees that are not performing adequately and work with them to identify any problems and contributing factors, and to develop and implement a strategy to correct the problem.

Insure that all areas are cleaned as scheduled and are neat and orderly.

Work with the employees on any deviations in the cleaning schedule.

Identify any problems observed with the department supervisor or production foreman in order for them to make any necessary changes and correct the problems in an expeditious manner.

**** Must utilize required safety equipment in performing duties.**

10 _____

ONE SLOT AVAILABLE

Insure that each employee (especially new employees) is trained in the proper methods for the job assigned and understands the quality or cost implications of using improper methods.

Encourage teamwork, motivate employees, and continually monitor activities, utilizing each employees capabilities to insure smooth flow and optimum output.

Insure that company rules, policies, and procedures are being followed-in particular; 1) Insure that personal protective equipment is available and is being properly used. 2) Insure that all employees are at their assigned work stations and begin work in a timely manner at the start of the shift or work period and 3) Insure that all employees continue working until the end of the shift or work period.

Assist the department supervisor or the Production Manager in identifying employees that are not performing to established standards or rates and work with them to identify any problems and contributing factors, and to develop and implement a strategy to correct the problem.

**** Insure that the production schedule is followed, that all products are built as scheduled and that all production orders are completed in a timely manner.**

1. Discuss any necessary deviations from the production schedule with the department supervisor or Production Manager.
2. Insure that all every product assembled meets or exceeds all applicable quality standards.
3. Continually review the production schedule and insure the uninterrupted flow of materials (both purchased and fabricated) to the assembly line.
4. Identify problems with materials (glass, vinyl, etc.) and work with the department supervisors or Production manager to make any necessary changes and correct the problems in an expeditious manner.

QUALIFICATIONS:

Must have a thorough understanding of the vinyl window department and be able to take charge in the absence of the department supervisor or the production manager.

Must possess good leadership skills and be able to direct the activities of and motivate a group of 15-20 employees.

Must possess a thorough understanding of the vinyl window (design and operation) and be familiar with field problems associated with these products.

Must thoroughly understand all assembly task for the assigned production area and the proper methods for each.

Must be able to read and interpret production orders, product specifications and blueprints.

Must be able to use measuring instruments such as tape measure, dial calipers, etc.

1. ~~James J. Thompson~~
2. Timothy A. Thompson
3. William J. Thompson
4. Julius H. Thompson
5. His Thompson
6. _____
7. _____
8. _____
9. _____
10. _____

ONE SLOT AVAILABLE

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

CROFT METALS, INC.¹

Employer

and

Case No. 15-RC-8393

**INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS, AND HELPERS,
AFL-CIO**

Petitioner

SUPPLEMENTAL DECISION

On May 1, 2002,² subsequent to a representation hearing held on April 15, the Region issued the initial Decision and Direction of Election in this matter in which it directed an election in the following unit:

Included: All production and maintenance employees employed at the Company's Magnolia manufacturing facility, including material inventory clerks, plant clerical employees, inter-plant driver, and lead persons.

Excluded: All over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, plant nurse, corporate traffic records lead person, corporate traffic records clerk, personnel technician, CAD technician, accounting and payroll clerk, production control clerk, watchmen, guards, and supervisors as defined in the Act.

¹ The name of the Employer appears as amended at the hearing.

² Unless otherwise noted, all dates are 2002.

Pursuant to that Decision, an election was scheduled for May 29. Thereafter, the Employer filed a request for review of the Decision, contending that it had not been given adequate notice of the April 15 hearing. Additionally, the Employer argued on review that the Region erred by (1) finding that the Employer's leadmen and lead supervisors were not statutory supervisors, (2) including material inventory clerks in the petitioned-for production and maintenance unit as "plant clericals," (3) voting three other clerical employees under challenge, (4) including the interplant driver in the unit found appropriate, and (5) failing to find that Southern Council of Industrial Workers, Carpenters Local 2280 had not been given proper notice of the hearing.

On May 29, the election was conducted and, at the direction of the Board, the ballots were impounded while the Board considered the issues raised by the Employer's request for review. On June 21, in *Croft Metals, Inc.*, 337 NLRB No. 106 (2002), the Board issued its Decision on Review, in which it announced a requirement that parties to a representation case be given 5 working days notice of representation hearings and remanded this matter to the Region to reopen the hearing to receive additional evidence on the other issues raised by the Employer. Accordingly, on July 8, the hearing was reopened and, prior to the close of the hearing on this same day, both parties were given the opportunity to present evidence. On July 29, I erroneously issued a Second Decision and Direction of Election in which I directed an election. Inasmuch as the election had already been held in the same unit, on July 31, I issued an Order Revoking the Second Decision and Direction of Election. This Supplemental Decision is being issued in its place.

Upon the entire record³ in this proceeding, the undersigned finds:

³ The Employer timely filed post-hearing briefs.

1. The Employer contends that the Hearing Officer erred by allowing the Petitioner to participate in the reopened hearing. The Employer maintains that because the Petitioner did not file a request for review of the Region's May 1 Decision and Direction of Election, it waived the right to participate further in this matter. The Employer cites no authority for this contention. The Board's June 21 Decision remanding the matter for further hearing did not provide that the Petitioner would be precluded from presenting evidence at the reopened hearing. It is well established that in pre-election representation proceedings it is the responsibility of the hearing officer to develop a full and complete record. In the instant matter, the hearing officer's decision to allow both parties to participate was consonant with this objective. I thus find that the Hearing Officer did not err by allowing the Petitioner to participate in the hearing and present evidence. As discussed above, on review of the Region's May 1 Decision and Direction of Election, the Employer argued that the Region erred by failing to find that Carpenters Local 2280 had not been given proper notice of the April 15 hearing. In its post-hearing brief, the Employer, for the first time, contends that the record in this matter is incomplete in that it does not contain any evidence that Carpenters Local 2280 has disclaimed interest in representing employees involved in the instant matter. The record shows that Carpenters Local 2280 was the exclusive bargaining representative of employees of the Employer in the following contractual bargaining unit:

All production and maintenance employees employed at Company's Magnolia Manufacturing facility, including plant clerical employees, interplant drivers, and lead persons; excluding over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, watchmen, guards, and supervisors as defined by the National Labor Relations Board in Case Number 15-RC-4641.

Official notice is taken of the proceeding in Croft Metals, Case No. 15-RD-826, in which, by letter dated March 29, Carpenters Local 2280 filed a disclaimer of interest in continuing to

represent the Employer's employees. Based on this disclaimer, the RD petitioner, an individual, requested that the decertification petition be withdrawn. Accordingly, on April 11, the Region issued an Order Approving Withdrawal of Petition noting that Carpenters Local 2280 had engaged in no action inconsistent with the disclaimer of interest. This Order was served upon the Employer. Neither the Order nor the disclaimer of interest were placed into evidence during either the initial or reopened hearing. It should be noted that during the July 8 hearing, the Employer neither argued that the record was deficient due to its failure to include the March 29 disclaimer nor objected to the Hearing Officer's decision to close the reopened hearing at its conclusion. Charles Coleman, president of Carpenters Local 2280, testified on the Petitioner's behalf during both the initial and reopened hearings. At no time did Coleman indicate that Carpenters Local 2280 wished to intervene in this matter or that Carpenters Local 2280 was in any way wronged by not receiving formal notices of the hearings in this matter. Moreover, the Employer does not contend that Carpenters Local 2280 has an interest in this matter or that it has a collective-bargaining agreement with Carpenters Local 2280 that would constitute a bar to an election. Nor has the Employer maintained that Carpenters Local 2280 has taken action that would be inconsistent with its March 29 disclaimer of interest. The absence in the record of a copy of Carpenters Local 2280's disclaimer of interest and the April 11 Order Approving Withdrawal of petition does not warrant reopening the record. Based on the appearance of Carpenters Local 2280 at the hearings as well as its unquestioned disclaimer of interest, it is obvious that any failure to formally notify Carpenters Local 2280 of the hearing dates is of no moment.

2. The record shows that the Employer, Croft Metals, Inc. is a Mississippi Corporation with its principal place of business located in McComb, Mississippi. The Employer

is engaged in the manufacture of aluminum and vinyl doors and windows at its manufacturing facility located in McComb, Mississippi, the only facility involved herein. During the past 12 months, a representative period, the Employer purchased and received at its McComb, Mississippi facility goods valued in excess of \$50,000 directly from points located outside the state of Mississippi.

Based upon the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Employer does not contest the labor organization status of the Petitioner. However, it refused to stipulate that it was a labor organization as defined by Section 2(5) of the Act.

The record reveals that the Petitioner is the collective-bargaining representative of approximately 100,000 employees in the United States and Canada. It has various local lodges. Delegates from these lodges elect the Petitioner's international officers, and employees participate in and are members of the local lodges. The record further shows that the Petitioner has negotiated collective-bargaining agreements with various employers and employer associations. In *Alto Plastics Manufacturing Corp.*,⁴ the Board held that:

In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment.

⁴ 136 NLRB 850, 851-852 (1962).

The record shows that the Petitioner meets both these criteria. The Petitioner exists, in whole or in part, for the purpose of collectively bargaining on behalf of employees throughout the United States and Canada and engages in grievance-handling on behalf of the employees it represents. The record also shows that employees participate in the Petitioner's organization. Based upon the above, I find that the Petitioner is a labor organization under Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain of the Employer's employees.

5. As noted above, in its May 1 Decision, the Region found appropriate the production and maintenance unit set forth in the opening paragraph of this Supplemental Decision. During the reopened hearing, the parties were given the opportunity to submit additional evidence in support of their contentions regarding the unit. For the reasons described below, I reaffirm the unit determination set forth in the May 1 Decision. The positions of the parties are set forth below.

The Petitioner seeks to represent a unit of all production and maintenance employees employed at the Employer's manufacturing facility in McComb, Mississippi, including plant clerical employees, the inter-plant driver, and lead persons; excluding all over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, watchmen, guards, and supervisors as defined by the Act.

The Employer contends that the following classifications/employees should be excluded from the unit: 1) lead persons because they are statutory supervisors; 2) the material inventory clerks and Patricia Greenlee, Diane Strawbridge and Gwen Sandifer because they are office clerical employees; and 3) the inter-plant driver because he lacks a sufficient community of interest with the stipulated unit.

With regard to the supervisory hierarchy at the Facility, the record shows that the Employer has a plant manager who reports directly to the vice president and director of manufacturing. The vice president and director of manufacturing reports to the President of the company. There are approximately 20 to 25 admitted supervisors over the approximately 350 employees in the unit the Petitioner seeks to represent. These supervisors report directly to the plant manager. Some of the departments in the plant operate multiple production lines that operate side by side. A supervisor may be responsible for a large department that has multiple lines or two or more departments that cover multiple lines.

LEAD PERSONS

As noted above, the Employer contends that the lead persons are supervisors within the meaning of Section 2(11) of the Act. There are 25 to 30 lead persons who report directly to one of the admitted supervisors. The lead persons fall into the classifications of load supervisor, specialty lead person, lead person (A), and lead person (B). The load supervisor is responsible for loading the merchandise on trucks for shipping to customers. Typically, the specialty lead person is an individual assigned to one of the various higher technical departments, which include the tool room, extrusion department, and machine shop.⁵ In comparison to Lead Person "B", the Lead Person "A" is a higher-level lead person.

a. Load Supervisors

Employee Leo Holmes testified that he is employed by the Employer as a lead person "A" in the shipping department and is sometimes referred to as a load supervisor. Holmes is one of

⁵ It appears that other departments have specialty lead persons assigned to them, but the record is silent as to the name of these departments. In addition, the record is silent as to the total number of specialty lead persons employed by the Employer.

four employees assigned to a particular truck. One employee brings the merchandise to the truck; Holmes counts and scans the merchandise; and the other two employees stack the merchandise inside the truck. Holmes spends his day working at the truck's location with the other three employees. He receives an order indicating how a truck is to be loaded. When the truck has to make more than one delivery, merchandise is loaded on the truck in the order of the delivery schedule. On a daily basis, Holmes instructs three employees on where and how to place the merchandise.

Holmes testified that he has a higher pay rate than the other three employees he works with but that he was uncertain as to how much the other three employees earn. The record is silent as to Holmes' rate of pay.

Holmes' supervisor is Wilma Martin. For at least three months, she has not worked due to an illness. He believes that Plant Manager Harvey Driver has filled in for Martin during this period.

Holmes does not have the power to grant time off, hire, fire, discipline, transfer, lay off, or recall from layoff any employee. He is not involved in the process of interviewing individuals for employment and plays no role in determining where new employees will work. He does not attend supervisors' meetings. Although Holmes is not involved in the evaluation process for probationary employees, his supervisor has asked for his recommendation as to whether a probationary employee should be retained. However, he does not recall any time in which his supervisor agreed with his recommendation. However, he recalls recommending that the Employer not retain certain employees and asserts that the Employer, nonetheless, elected to retain those individuals. In calendar year 2002, the Employer has not asked Holmes for his recommendation concerning the retention of probationary employees.

Holmes has never verbally reprimanded employees regarding their work. In the past, Holmes has complained to his supervisor about some of the workers in his crew. To his knowledge, none of his complaints have resulted in any of the employees receiving a written warning or any other type of discipline.

Finally, Holmes has been a lead person "A" for the last 17 years, and during this 17 year period, was a member of the bargaining unit that was previously represented by Carpenters Local 2280.

Employee James Martin testified that he is a load supervisor and that he earns \$9.30 an hour. He spends a normal day working with his hands loading trucks. He has a crew that works with him; however, the record is silent as to the number of employees in his crew or their hourly rates of pay. He gives his crew instructions on how to load a truck and loads the product in a manner to ensure it is not damaged in transit. He learned how to load trucks through experience.

As is the case of Holmes, Wilma Martin is James Martin's supervisor. James Martin does not have any extra duties when Wilma Martin is not at work.

He does not attend supervisors' meetings, check time records, interview applicants, or hire employees. He has never disciplined employees or recommended their discipline nor does he have the authority to discipline.

b. Specialty Lead Persons

The Employer presented evidence regarding three specialty lead person positions. Employees occupying these positions work in the tool room, the extrusion department, and the maintenance department.⁶

With regard to the specialty lead person(s)⁷ in the tool room, Vice President of Human Resources Vic Donati testified that those filling this position have technical knowledge of the tool room that was acquired over a long period of time. He provided no details concerning how that knowledge was acquired. The Employer presented no evidence concerning any specific supervisory duties and/or functions of the individual(s) occupying this position.

With regard to the specialty lead person(s) in the Extrusion Department, Donati testified that the job duties for this position have evolved over time. In this regard, while those occupying this position formerly supervised production employees, they are now chiefly responsible for the actual operation of the presses and ovens in the Extrusion Department. Donati further testified that over the years, the Employer has paid to send the specialty lead person(s) to training seminars in preventive maintenance, the operation of oil gear, and the use of the dye shop. The record contained no testimony or evidence as to any specific supervisory duties or functions of the individual(s) occupying this position.

With regard to the specialty lead persons in the Maintenance Department, Donati testified that these employees handle the maintenance of the plant's equipment and grounds. He

⁶ The Employer also testified that there was another specialty lead person called the corporate traffic records clerk. After the Employer presented evidence regarding this position, the parties stipulated that the corporate traffic records clerk should be excluded from the bargaining unit. I hereby approve this stipulation.

⁷ The record is silent as to the number of specialty lead persons assigned to the tool room.

further testified that these individuals are similar to crew foremen in that they assign work to employees. The Maintenance Department specialty lead persons report to the maintenance supervisor⁸. There are currently twenty (20) employees assigned to the Maintenance Department under the direction of one maintenance supervisor.⁹ The maintenance supervisor is responsible for the large construction projects and repairs, while the specialty lead persons handle work and repairs on small construction projects. The Employer asserts that the maintenance specialty lead persons earn over forty-six percent (46%) more per hour than the highest paid production employees admittedly included in the unit. However, the record does not show the hourly rate of pay for the maintenance specialty lead persons.

Donati testified that the maintenance specialty lead persons have the authority to discipline members of their crews. However, he could not recall any specific instances in which a maintenance specialty lead person exercised this authority. The record contains no evidence as to whether the Maintenance Department specialty lead persons have the power to grant time off, fire, transfer, lay off, or recall from layoff any employee. In addition, there was no evidence presented as to whether the maintenance specialty lead persons are involved in the process of interviewing individuals for employment or selecting applicants or employees to work on their crews. Finally, the record contains no evidence as to whether the maintenance specialty lead persons are involved in the process of evaluating crewmembers.

⁸ The maintenance supervisor is an admitted supervisor.

⁹ Donati did not know the exact number of specialty lead persons assigned to the maintenance department but he believed the number is less than 5.

c. Lead Persons "A" and "B"

The lead persons "A" and "B" are hourly employees who punch a time clock.¹⁰ During the term of the Employer's collective-bargaining relationship with Carpenters Local 2280, the lead person "A" and lead person "B" classifications were bargaining unit positions. In accordance with the practice established in the collective-bargaining agreement between the Employer and Carpenters Local 2280, vacancies for these positions are posted and bid¹¹ upon by hourly employees. If there is not a qualified bidder from within the company, the Employer may hire someone from outside to fill the vacancy.

Lead Persons "A" and "B" receive the same benefits as hourly employees stipulated to be in the unit. Admitted supervisors, on the other hand, receive some benefits that are not available to hourly employees. The record is silent as to what these benefits are.

Lead Persons "A" and "B" do not hire, fire, transfer, lay off or recall from layoff any employees. The record reflects that lead persons "A" and "B" have recommended for hire individuals who were hired by the Employer. However, Plant Personnel Director Leonard testified that any employee could recommend an individual for hire and that the Employer has hired individuals who were recommended by rank-and-file employees. The lead persons are not involved in the process of interviewing individuals for employment. There is no evidence that they make the schedules for employees and they lack the authority to grant time off.

Plant Personnel Director Leonard testified that employees are evaluated yearly. The record shows that some lead persons have evaluated employees' performance. Employer Exhibit

¹⁰ All the hourly employees punch a time clock. Supervisors are salaried employees and do not punch in or out.

¹¹ Supervisors are not selected through the bidding process.

17 reflects that lead person Oliver Anderson evaluated Robert Patterson on July 31, 2001 and May 23, 2002. Anderson also evaluated another employee on June 27, 2002 and reviewed the evaluation of yet another employee on March 26, 2001. Likewise, lead person Earlisha Matthews evaluated three separate employees on May 22, 2001. Lead person John Mintin reviewed another individual's evaluations of two employees on November 6, 2001. Plant Personnel Director Leonard testified that Oliver Anderson has been a lead person for three years and that he evaluates the three other employees who work in his area. The record is silent as to how long Earlisha Matthews and John Mintin have been lead persons and the number of employees assigned to their respective work areas. Although there are approximately 25 to 30 lead persons, the evidence reveals that only the above named three lead persons have participated in employee evaluations. There was no documentary evidence presented of any other lead persons participating in the evaluation process. Further, Leonard testified that to the best of his knowledge, none of the evaluations were used to grant promotions or awards.

Lead persons "A" and "B" do not discipline employees. However, when there is an incident that may result in discipline, they may take the employee(s) involved to the personnel office for appropriate action. The personnel office investigates the incident and takes the appropriate action.

Lead persons "A" and "B" are responsible for ensuring that the production lines run properly. If machinery needs repair, they may call the Maintenance Department to make the repair. Leonard testified that there are some departments in which the department supervisor is not physically present in the department and, as such, the lead person runs the department. However, Leonard did not name these departments or the lead persons and the record does not

otherwise reflect this information. Further, the record is silent as to the meaning of "running" these departments.

If a person on the production line is ill, the lead person may allow him to leave the line to receive first aid. The Employer asserts that the lead persons have the authority to permit employees to leave work early. However, Donati testified that in most cases, the lead persons must check with an admitted supervisor before allowing an employee to leave work. The record contained no examples of any instances in which Lead Persons "A" or "B" exercised independent judgment in granting time off.

The record shows that some lead persons have signed "punch detail reports," which essentially set forth when employees punch in and out. The payroll clerk uses the "punch detail reports," to calculate employees' pay. However, Leonard further testified that not all lead persons sign these reports. Also, at least one rank-and-file employee, Nettie Johnson, has signed these reports.

The record shows that some lead persons have been issued written warnings because the lead person's production line failed to produce in accordance with the Employer's expectations.

Charles Coleman testified that he has been a lead person for the last ten (10) years. For the last six (6) years, he served as the president of Carpenters Local 2280. Coleman currently works on the 1600 line, which makes doors. Coleman testified that 90 to 98 percent of his time is spent working on the line making doors. Although Coleman testified that he gives instructions to employees on the line, he gave no details regarding the instructions he gives or the factors involved in determining what those instructions will be.

Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In *NLRB v. Kentucky River Community Care, Inc.*, 121 S.Ct. 1863, 1867 (2001), the Supreme Court approved the Board's well-established precedent that the party asserting supervisory status has the burden of proof to establish such status. A statutory supervisor must possess at least one of the indicia specified in Section 2(11) of the Act. *NLRB v. Kentucky River Community Care, Inc.*, 121 S.Ct. at 1867; *Queen Mary*, 317 NLRB 1303 (1995); *Allen Services Co.*, 314 NLRB 1060 (1994). Moreover, a statutory supervisor must exercise supervisory indicia in a manner requiring the use of independent judgment. The Supreme Court agreed with the Board that independent judgment is ambiguous and that many nominal supervisory functions may be performed without the exercise of such a degree of judgment or discretion as would warrant a finding of supervisory status under the Act. *NLRB v. Kentucky River Community Care, Inc.*, 121 S.Ct. at 1867. If the functions set forth in Section 2(11) are exercised in a routine, clerical, perfunctory or sporadic manner, then supervisory status is not conferred. *Browne of Houston, Inc.*, 280 N.L.R.B. 1222 (1986). Isolated and infrequent incidents of supervision do not elevate a rank and file employee to supervisory level. *NLRB v. Doctors' Hospital of Modesto*, 489 F.2d 772, 776 (9th Cir. 1973). Employees who are merely conduits for relaying management information to other employees are not supervisors. *Browne of Houston, Inc.* supra. The Board will not consider titles alone to be determinative of supervisory status. *Marukyo U.S.A., Inc.*, 268 N.L.R.B. 1102 (1984). The Board also is careful not to construe supervisory status too broadly because a worker who is found to be a

supervisor loses his organizational rights. *Bay Area-Los Angeles Express*, 275 NLRB 1063 (1985); *McDonnell Douglas Corp v. NLRB*, 655 F.2d 932 (9th Cir. 1981).

Applying these principles to the instant case, I find that the Employer has failed to meet its burden of demonstrating that the lead persons are statutory supervisors. The record fails to establish that the lead persons have the independent authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward employees, adjust their grievances, or to effectively recommend any of the foregoing. With regard to discipline, although Coleman has made complaints regarding coworkers, there is no evidence that these complaints resulted in any personnel action. Similarly, although other lead persons may report incidents of misconduct, the Employer conducts its own independent investigation before deciding what action, if any, to take. The Board has held that the mere reporting of misconduct does not confer supervisory status if an employer conducts its own investigation prior to imposing discipline. *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). Although the lead persons are responsible for work within their departments, the evidence fails to establish that they use independent judgment in directing the work of other employees.¹² Holmes does not use independent judgment in loading trucks, instead the loading of the truck is essentially dictated by the delivery schedule. The evidence

¹² In its brief, the Employer cites *Aurora & East Denver Trash Disposal*, 218 NLRB 1, 10, 89 LRRM 1416 (1975) for the proposition that a foreman who claimed he was a mere conduit for the employer's orders to employees was a supervisor where he led other employees to believe he was one. That case is distinguishable. In that matter the foreman was instrumental in the termination of two employees and the owner of the company sought the foreman's opinion regarding whether or not to hire applicants for employment. In the instant case, lead persons are not instrumental in terminating employees and the supervisors do not seek their opinion regarding the hiring of applicants. The Employer also cites *Gerbes Super Market, Inc.* 213 NLRB 803, 806 (1974) for the proposition that a department manager was a supervisor where he was regarded by fellow employees as their "boss". In that case, all the department employees testified that the department manager was their boss and that he gave them permission to take whole and half days off from work. In the instant case, none of the rank-and-file employees testified that they consider the lead persons to be bosses. In addition, the lead persons cannot give employees permission to take any time off. In addition Employer cites *N.L.R.B. v. McCullough Environmental Services, Inc.* 5 F.3d 923, N.30 (5th Cir. 1993) for the proposition that an indicator of supervisory authority is whether other employees routinely seek out the individuals alleged to be supervisors for assistance in performing their duties. This case involved the issue of whether lead operators were supervisors. The facts established that the lead operators were the highest ranking employees present at the plant during the night and weekend shifts which constituted the majority of the facility's operating hours. In addition to assigning employees to specific tasks, lead operators had the authority to send employees home if they were ill. In the instant case, the lead persons are not highest ranking employees present during their shifts and cannot send employees home if they are ill. Finally, the Employer cites

further fails to establish that the lead persons make employee schedules or give employees permission to come in late, take a day off, or leave early. The record indicates that both rank-and-file employees and lead persons may recommend individuals for employment. The record does not establish that the Employer gives any grater weight to recommendations made by lead persons or that it has ever based a decision to hire solely upon the recommendation of a lead person. While some lead persons have signed time reports, the Board has held that this function is routine in nature and does not confer supervisory status. *John Cuneo of Oklahoma, Inc.*, 238 NLRB 1438, 1439 (1978). Further, as earlier noted, rank-and-file employees have also signed time reports. With respect to the lead persons' role in the evaluation process, the Board has held that the authority to evaluate employees does not elevate one to a supervisory level where those evaluations do not impact upon employees' terms and conditions of employment. *Harbor City Volunteer Ambulance Squad*, 318 NLRB 764 (1995).

Accordingly, I find that the authority of the lead persons is insufficient to render them Section 2(11) supervisors. I will, therefore, include them in the unit.

OFFICE CLERICAL EMPLOYEES

The Employer asserts that the material inventory clerk positions and the positions held by employees Patricia Greenlee, Diane Strawbridge and Gwen Sandifer are office clerical positions and should be excluded from the bargaining unit. The evidence indicates that none of these

N.L.R.B. v. KDFW-TV, Inc. 790 F.2d 1273, 1278 (5th Cir. 1986) for the proposition that since the lead persons are answerable for the discharge of a duty or obligation or is accountable for the work product of the employees they direct that they responsibly direct others. This case involved an issue of whether directors, producers, associate producers and assignment editors were supervisor. Although the evidence established that these individuals directed their co-workers, they were not held fully accountable and responsible for the performance and work product of the employees and thus, were not found to be supervisors. As in the case of the directors, producers, associate producers and assignment editors, the lead persons in the instant case do not have the authority to hire, discharge, assign, reward, reprimand and effectively evaluate co-workers.

positions were covered by the collective bargaining agreement between the Employer and Carpenters Local 2280.

a. Material Inventory Clerks

There are two material inventory clerks. One, Paula Cothorn, works in the production stock room. The other, Mary Rhodus, works in the maintenance stock room. Cothorn gives employees expendable or replacement items needed for the production lines. She also scans the labels on the products that are sent to the warehouse. Rhodus provides employees with safety equipment, tools and replacements parts for the production lines. Lead Person Holmes testified that he contacts Cothorn to find out whether a product has been made, when it was made, and what time it was made. Lead Person Coleman testified that, in order to perform his job, he contacts Rhodus daily to obtain safety equipment. Coleman further testified that members of his crew also obtain safety items from Rhodus. The material inventory clerks were excluded from the unit represented by Carpenters Local 2280. However, they are hourly employees who punch a time clock and currently receive the same benefits as other admitted unit employees.

The Board generally includes plant clerical employees in production and maintenance units. *Raytec Co.*, 228 NLRB 646 (1977). The test for whether employees are plant clerical employees is whether their duties are closely integrated with the production process. *Hamilton Halter Co.*, 270 NLRB 331 (1984). In the instant matter, there can be little doubt that the duties of Cothorn and Rhodus are an integral part of the production process. Cothorn works in the production stockroom and scans the labels on products that are sent to the warehouse. Rhodus works in the maintenance stock room and provides tools and equipment for the production lines. Both have daily interaction with unit employees providing them with equipment and other

materials. Their inclusion in the unit is further supported by the fact that they punch a time clock and receive the same benefits as unit employees. Thus, although they were excluded from the unit represented by Carpenters Local 2280, I find that their inclusion in the unit would not render it inappropriate. Thus, I will include them in the unit.

b. Patricia Greenlee

Greenlee works in the production stock room, which is located in a building separate from the main plant. Forklift drivers in the petitioned-for unit work in this building but they do not work in Greenlee's office. The record is silent as to Greenlee's specific duties and responsibilities.

c. Diane Strawbridge

Strawbridge is a lead person "A" who works in the production control office. Other than the evidence adduced regarding the general responsibilities of lead persons, the record contains no specific information concerning Strawbridge's specific duties and responsibilities.

d. Gwen Sandifer

Gwen Sandifer works in the production control office with Strawbridge and another employee. Coleman testified that he obtains labels from Sandifer every workday. The record is silent as to Sandifer's other duties and responsibilities.

The evidence submitted at the hearing is insufficient to determine whether Greenlee, Strawbridge, and Sandifer share a community of interest with the other classifications that are sought in the petition. I will, therefore, allow them to vote subject to challenge.

INTER-PLANT DRIVER

The inter-plant driver¹³ is an hourly employee who, like the production and maintenance employees, punches a clock. He spends a majority of his day moving trucks and trailers within the yard, as needed. His hourly rate of pay is less than that of a lead person. On occasion, he earns a premium when he makes a short-term, over-the-road trip. The record is silent as to the frequency of these trips. Because he is paid hourly, his method of pay differs from the over-the-road drivers who are paid based upon their time on the road and Department of Transportation regulations. He receives the same benefits as the production and maintenance employees.

Like the production and maintenance employees, the inter-plant driver is supervised by the plant manager. The inter-plant driver uses the same restroom and break room facilities as the unit employees.

It is well established that to be appropriate under Section 9(b) of the Act, a petitioned for unit need not be the most appropriate unit. Rather, it need only be *an* appropriate unit. *Overnite Transportation Co.*, 325 NLRB 612 (1998). In the instant matter, I find that the inter-plant driver shares a sufficient community of interest with the petitioned-for employees to warrant his inclusion in the unit. He is paid on an hourly basis and enjoys the same benefits and supervision as the production and maintenance employees. There can be little doubt that his duties are closely integrated with the production process. Moreover, he utilizes the same restroom and break room facilities as unit employees. I will, therefore, include him in the unit.

Accordingly, based upon the stipulations of the parties, and the record as a whole, I find the same unit appropriate under Section 9(b) of the Act as was found appropriate in the Region's May 1 Decision and Direction of Election:

¹³ The inter-plant driver was included in the bargaining unit formerly represented by Carpenters Local 2280.

Included: All production and maintenance employees employed at the Company's Magnolia manufacturing facility, including material inventory clerks, plant clerical employees, inter-plant driver, and lead persons.

Excluded: All over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, plant nurse, corporate traffic records lead person, corporate traffic records clerk, personnel technician, CAD technician, accounting and payroll clerk, production control clerk, watchmen, guards, and supervisors as defined in the Act.

Inasmuch as an election has already been conducted in this unit, I will direct that the ballots that were impounded at the conclusion of that election be opened and counted.¹⁴

DIRECTION

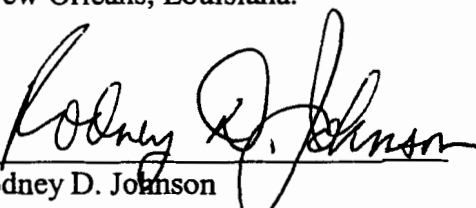
It is directed that the ballots impounded at the conclusion of the election on May 29 be opened and counted.

¹⁴ This will be conditioned upon the Board's ruling on review. If no request for review of this Supplemental Decision is filed, I will direct that the ballots be opened and counted upon the conclusion of the period for filing review. In the event a request for review is filed, and review is denied, I will direct that the ballots be opened and counted after the Board denies review. If review is granted, I will direct that the Region act in accordance with the Board's decision.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 21, 2002.

Dated this 7th day of August, 2002, at New Orleans, Louisiana.


Rodney D. Johnson
Acting Regional Director, Region 15
National Labor Relations Board
1515 Poydras Street, Suite 610
New Orleans, LA 70112-3723

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